



Board of Health Agenda

Date: June 19, 2019

Time: 5:30 PM

Location: Ground Floor Conference Room

1. Acceptance of Meeting Minutes from May 22, 2019
2. HEARING:
Keeping of Hens - 14 Ryder Street
3. CORRESPONDENCE
RECEIVED:
Fletcher Tilton
4. UPDATES:
Environmental
5. UPDATES:
Restaurant
6. UPDATES:
Public Health Nurse

Adjourn



Town of Arlington, Massachusetts

Acceptance of Meeting Minutes from May 22, 2019

ATTACHMENTS:

Type	File Name	Description
▣ Reference Material	05222019_Minutes_Board_of_Health_Draft.pdf	Meeting Minutes 5-22-2019



Arlington Board of Health Minutes

Date: *Wednesday, May 22, 2019*

Time: *5:30 pm*

Location: *Arlington Senior Center, 27 Maple Street, Arlington MA 02476 (Mural Room)*

Board Members in Attendance: Dr. Marie Walsh Condon, Mr. Kenneth Kohlberg

Absent: Dr. Kevin Fallon

Staff in Attendance: Natasha Waden, Public Health Director; Pat Martin, Health Compliance Officer; Kylee Sullivan, Health Compliance Officer; Jessica Kerr, Public Health Nurse; Karen Koretsky, AYHSC Director; Sagar Desai, AYHSC Intern; Carlene Newell, AHS Educator

Others in Attendance: Erika Glaser, Jay Brewer, Anya Brewer, 84 Club Members: Olivia Eng-Canry, Maya Jacob, Gwen Van Allen, Ellie Egan, Claire Egan, Sophie Snibbe, Elizabeth Liakos, Erica Siegel, and Grant Wadman

Recording Secretary: Laura Munsey, Office Manager, Health and Human Services

Minutes

Meeting called to order by Dr. Marie Walsh Condon at 5:30 pm

A request was made and granted to table Agenda Item 2: Presentation of Arlington High School Club 84 to later in the evening after Tesse Food Products update.

1. Acceptance of Meeting Minutes from April 10, 2019

Motion made by Mr. Kenneth Kohlberg, seconded by Dr. Marie Walsh Condon to accept the April 10, 2019 meeting minutes as submitted.

Vote: 2-0 in favor of the motion (Unanimous)

2. Hearing: Keeping of Hens – 165 Oakland Avenue. Inspector Sullivan introduced Jay and Anya Brewer who submitted an application for Keeping of Hens. Inspector Sullivan reported that one

neighbor had expressed concerns about the application regarding possible odors due to the hens. The same neighbor also called the Health Department for additional information. Inspector Sullivan informed the Board that after discussions with the neighbor, their concerns were alleviated. She reported she shared the application process, the cleaning schedules, and reported that to date, no complaints have been raised by any neighbors of existing permitted properties regarding odor caused by the hens. The Board asked the applicants why they were interested in a permit to keep hens to which Mr. Brewer stated they would like to raise hens for the eggs, and would enjoy keeping and caring for the animals. He further stated he grew up on a farm and has experience raising hens. Ms. Brewer stated that she went to a farm camp and enjoyed interacting with the animals, particularly the hens. She stated she is excited to raise hens in her own yard. Mr. Brewer reported they are looking at Barn Rock Hens, which are a salt and pepper color. Inspector Sullivan reported that given the size of chicken run only 4 hens would be allowed under the existing plans. If additional hens are requested, the applicants will work with Health Department to meet all regulations and requirements. Mr. Brewer reported they are currently considering a larger run, and coop. Inspector Sullivan reported that all requirements have currently been met, and she recommended approval contingent upon final inspection.

Motion made by Mr. Kenneth Kohlberg to approve the Keeping of Hens permit for 165 Oakland Avenue, contingent upon final inspection and approval by the Health Department.

Vote: 2-0 in favor of the Motion (Unanimous)

3. Tesse Food Products

Inspector Martin reported that a Cease and Desist Letter was sent to Tesse Food Products ("Tesse") for products that contain CBD. He stated that Tesse requested a hearing regarding the Cease and Desist Letter. He reached out to owner of Tesse, and reported that she informed him that she did not plan on attending the hearing. Inspector Martin stated that the Health Department gave several options for hearing dates and Tesse denied all offers. The Board is required to hold a Hearing within 10 days. Director Waden and Inspector Martin informed the Board that unapproved food additives were being used in the products, and Tesse Food Products did not have a proper processing license or retail license from the Massachusetts Department of Agricultural Resources. Director Waden recommended that a final email be sent to Tesse, and if they do not attend the next meeting, this matter will be officially closed. It was reported that Tesse was working out of the Local Fare and they have ceased operation. Director Waden informed the Board that under the FDA Food Code, CBD cannot be added to food products. She further reported the Health Department enforces the FDA Food Code.

4. Presentation: Arlington High School 84 Club. The students of Arlington High School's 84 Club, presented to the Board the analysis and findings of their research regarding Vaping amongst

High School students in Arlington. The 2-part presentation included a High School Impact Presentation followed by a Community Presentation. This project was funded by a mini-grant from Health Resources in Action.

High School Impact Presentation. The students created and sent out a survey regarding vaping to all students at Arlington High School. They compared vaping activity results with comparable data from the 2016 survey. The 2019 survey received 850 responses. The greatest number of responses were from Freshmen, and the least were from Seniors. They reported that in 2016 4% of the students who responded to the survey used vaping products. In 2019 they reported 1 in 4 students have tried vaping. Analysis of the 2019 results showed 17% of students vape regularly. The students also reported, that based on their own observations, they believe the number of vape users is actually higher than reported. The reasons given for vaping included: "because it's fun", "I feel irritated when I don't do it", and "my friends were doing it". The majority of respondents reported they believe it is "extremely easy" or "easy" to obtain vape products. The students also noted that vape products have more concentrated levels of nicotine. 45% of students reported that they see vaping on school grounds 3 or more times per week. 12% stated they use vaping products during the school day. Substances in vaping products can include nicotine or THC. 50% of respondents stated they have been offered a vape; 250 stated they were offered a vape at school, while 280 students stated they were offered a vape at parties. Over 100 students reported they have not been taught the health effects of vaping. It was reported that the Ottoson Middle School now has more preventative education. Freshmen reported receiving some vaping education, while Seniors reported that they did not receive any education on the health effects of vaping.

Community Presentation: The students presented a display board entitled "Community Vaping Photovoice". They explained that the display board tells a story through pictures. The center of the display included a map in which the students pin pointed schools, parks, and popular hang outs for youth. They also pin pointed retailers around town who sell Vape products. The students reported they would like to restrict the amount of retailers around school zones and would recommend a 500 foot ban around the schools in which vaping products are sold. The next photo was titled "Simply Satisfying". They reported a local retailer has a poster directly above the candy counter that has a picture of a vaping device and the words "Simply Satisfying". No signage included the dangers about vaping. Juuls were displayed next to candy and again no signage depicting any dangers was visible. The next photo was titled "Tower of Tricks". This picture showed a retailer displaying a large tower of vaping products right behind the counter and next to the lottery tickets. Another picture shows a sign that reads: "True Flavor, True Feel". The students recommended that as a community, Arlington should encourage store owners to make vape displays less visible by placing the products under the counter. The next Picture was named "Colors, Candies and Vapes". A convenience store in Arlington has vape products on the counter, surrounded by candy, energy drinks and mints. There are two cases of vapes labeled "Premium Cigars". The students reported youth may be drawn in by this colorful display. The final picture was called "Juul Before You Buy". A local convenience store has a Juul

advertisement at the checkout counter next to candy. The students stated that the placement of this advertisement ensures that kids see both items at the same time, indicating that buying a Juul is akin to buying a piece of candy. The students would like to see that the placement of such advertisements be restricted.

The Board thanked all the students from the 84 Club for their presentations. They informed the students that similar presentations in the past inspired Arlington's current regulation which requires a person to be at least 21 years old to purchase nicotine and nicotine delivery products. They stated that the students are addressing this epidemic and the Board appreciates the education they are providing not only to the Board and the community, but also to their peers. Dr. Condon Walsh stated that she has been a public health professional for over 25 years and vaping is one of the biggest public health concerns impacting our youth. She stated kids don't understand the health ramifications of vaping due to a lack of education. Mr. Kohlberg asked the students to elaborate on their ideas to address this problem. The students recommended restricting the sale of vape products and the presence of related advertisements within 500 feet of schools. They also stated less exposure to vape products and more educational opportunities would be beneficial. Also they recommended vape products be move to cigarette displays, so they are associated with tobacco rather than with candy and energy drinks. Dr. Condon Walsh requested the Health Department further research what other communities have done. She also recommended we look at the locations in which these products are sold and review advertising practices, to minimize the deception. Director Waden reported that she was recently informed that a store was using a deceptive sign to advertise vape products. She stated that she went to the location, spoke with the retailer, and the sign has since been removed.

Ms. Karen Koretsky, Director of the Arlington Youth Health and Safety Coalition reported the Massachusetts Department of Public health is starting a campaign to educate on the dangers of vaping. She reported, that She, Ms. Newell, and Mr. Desai, attended a state-wide conference on vaping earlier in the day. She stated "Warnings" should be on the outside of stores. Vaping should be included in those warning signs to make that association clearer. Vaping has become normalized among youth, and it is done secretly in classrooms, sports fields, in homes with parents home. Ms. Koretsky reported the students of the 84 Club spoke at Kick Butts Day at the State House where students who don't vape stated "they want to take their bathrooms back". Experts report that chasing students to catch them in the act of vaping will not work, instead change has to be made through a cultural shift in school communities. Ms. Koretsky reported that vape products are not tested, approved, nor regulated by the FDA. Also, there currently are no Surgeon Generals warnings on vape products. She reported each pod contains the nicotine equivalent of 20 cigarettes. Recent studies report that the equivalent of 20 cigarettes can be ingested by vaping in 15 minutes. Carlene Newell reported high concentrations of nicotine can have a greater negative impact on brain development of youth. Sagar Desai, Intern with the Arlington Youth Health and Safety Coalition, reported that Phillip Morris has just bought a large stake in Juul. He reported that big tobacco companies are involved in the vaping industry. Director Koretsky stated not only is prevention important but AYHSC will be working with the

Arlington Youth Counseling Center on harm reduction programs, by providing cessation groups for youth addicted to vaping.

5. Updates: Environmental. Inspector Sullivan reported that the Department continues to work with the Attorney Generals Housing Initiative on various abandoned or blighted properties. Currently, the Department has open cases for two properties in Eastern Housing Court. Inspector Sullivan also updated the Board on the Homelessness Outreach Program. She reported the recent spike in good weather has also resulted in an increase of people experiencing homelessness seeking shelter outdoors in the Greater Boston area. She stated that Arlington is working with Cambridge and Somerville to provide people with services. She reported that the Town is also working with the Massachusetts Housing and Shelter Alliance, Inc., (MHSA), a state agency that is supplying funding to house people experiencing homelessness. She stated a Grant was awarded to fund one year leases for 10 housing units. Each recipient will also have a caseworker assigned through the Somerville Homeless Coalition. Director Waden reported that she attended the Select Board Meeting on Monday, May 27th regarding Adult-Use Marijuana Dispensaries. She reported the Select Board approved host community agreements with Eskar which will be located at 23 Broadway and Apothca, who will be moving their Medical Marijuana Dispensary from Water Street to 1386 Mass Ave. She reported Apothca will co-locate the existing Medical Marijuana Dispensary with an Adult-Use Marijuana Dispensary. Two additional applicants applied for Community Host Agreements but they were not approved. One of those applicants was invited to re-apply for a permit at a different location in Town. The Board of Health will be hearing from the successful applicants within the next few months. Host Community Agreements need to be awarded before the agents can apply for permits from the Cannabis Control Commission (CCC).
6. Updates: Restaurant. Inspector Martin reported there have been no restaurant closures and 3 openings.
7. Public Health Nurse. Nurse Jessica Kerr informed the Board that on Saturday, May 18th, she and Director Waden attended a day-long training for the Medical Reserve Corp. The Department is currently working to prepare a budget and work plan for the State. They are looking to bring an MRC position in-house in Arlington as long as there is grant funding available. Currently this is a contractual agreement, which will expire the end of the fiscal year. Director Waden stated an in-house position would help continuity with the MRC program.

Meeting Adjourned: 6:24 pm



Town of Arlington, Massachusetts

Keeping of Hens - 14 Ryder Street

ATTACHMENTS:

	Type	File Name	Description
▢	Reference Material	14_Ryder_St_Hens.pdf	14 Ryder St Hens



Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170
Fax: (781) 316-3175

MEMO

To: Board of Health
From: Pdraig Martin
Date: June 13, 2019
RE: Keeping of Hens at 14 Ryder Street

Nicole Weber submitted a Keeping of Hens Site Plan Review Application for 14 Ryder Street on April 22, 2019. The dwelling is a single family structure owned by the applicant. This property is located on a 6,339 Sq Ft lot near the Ed Burns Arena. The property has eight abutters. The abutters were notified by the applicants of their intent to keep hens via certified mail. The letter notified the abutters of a hearing to be held on June 19th, 2019 at 5:30pm. To date, one neighbor raised concerns regarding rodent activity in the area. The coop's proposed location does not violate the six feet minimum distance from all property lines as stated in the Bylaws.

The attached site plan provided by the applicant illustrates that all distance requirements set forth in the Town Bylaw are satisfied. The application included responses and all necessary components. A site walk was conducted on June 10th to verify the proposed location of the coop/pen and the structure. If the application is approved, no final permit will be granted until an inspection of the finished coop confirms the build-out matches the design specifications.

Proposed Location of hen coop at 14 Ryder Street





Town of Arlington
Department of Health and Human Services
Office of the Board of Health
27 Maple Street
Arlington, MA 02476

Tel: (781) 316-3170

Fax: (781) 316-3175

KEEPING OF HENS SITE PLAN REVIEW APPLICATION

These guidelines are not final requirements. The Board of Health may require additional information based on the type and location of operation.

Plan Review Fee: \$150.00 (checks made payable to: Town of Arlington)

For office use only: Date/time application received: 4/22/19 Received by: PM
(BOH Staff)

APPLICANT NAME: Nicole Weber

APPLICANT ADDRESS: 14 Ryder St

CONTACT NUMBER: (617) 407-3137

CONTACT EMAIL: Weberphin@gmail.com

Keeping of Hens Application Process Summary

1. Submit this Site Plan Review Application to Health Department with check for \$150.
2. Health Department reviews application and conducts site walk.
3. After plan review and site walk, a meeting date with the Board of Health is set. The applicant will notify all abutters at least 14 days but no more than 30 days prior to the hearing, of their intent to keep hens and the BOH hearing date, time and location. Abutters shall include both owners and tenants. The applicant shall provide verification of notification in the form of a signed letter or USPS receipt that a certified letter has been received.
4. A meeting with the Board of Health is held and a decision made to approve or deny application based upon all requirements set forth in town bylaw.
5. Once approved by the Board of Health, the applicant is required to submit an Application for Annual Permit to Keep Hens to the Health Department with a check for \$100 and the applicant will be permitted to construct coop and pen.
6. A final inspection is conducted once coop and pen have been constructed and final approval to keep hens is granted.
7. An annual permit to keep hens is required through the Health Department expiring April 1st of every year. A renewal permit must be obtained. Permit holders that fail to renew their keeping of hens permit prior to April 1st are subject to a \$100 reinstatement fee.
8. An annual inspection will be conducted by the Health Department. Failure to meet requirements set forth in the town bylaws may result in a re-inspection fee of \$100 and a hearing with the Board of Health to determine whether permit should be revoked, suspended, or subject to further conditions.

CIRCLE/ANSWER THE FOLLOWING QUESTIONS:

Is the applicant the sole owner of the property where hens will be kept?

YES ☒ NO ☐

If no, please provide signed written statements from all property owners granting permission for the keeping of hens.

What is the size of the property lot in square feet? 6339 sq ft

I. HENHOUSE / PEN:

1. Location

- a. Will the henhouse/pen enclosure be in the rear yard of the property? YES/NO
- b. Will the henhouse/pen enclosure be at least six (6) feet from all property lines? YES/NO
- c. Will the henhouse/pen enclosure be at least 25 feet from existing residences on adjacent lots? YES/NO
- d. Will the henhouse/pen enclosure be located at least 200 feet from the high water mark of any known source of drinking water supply or any tributary thereof, and at least 50 feet from any well? YES/NO
- e. Will the henhouse/pen enclosure conform to all relevant property setbacks for accessory structures as specified in sections 6.18 and 8.23 of the zoning bylaws? YES/NO
- f. Will the henhouse/pen enclosure interfere with any utility or other feature of the property that needs suitable access? YES/NO
- g. Will the henhouse/pen enclosure be located in a well-drained area that does not discharge to a public way or neighbor's property? YES/NO
- h. Please provide a certified plot plan depicting all of the following: all structures on property, all structures on abutting properties, and proposed locations of the henhouse/pen enclosure, composting/manure storage and food storage.

2. Construction

- a. Will the henhouse enclosure provide a minimum interior floor surface of at least two (2) square feet per bird? YES/NO
- b. Will the pen enclosure provide a minimum ground surface of at least five (5) square feet per bird? YES/NO
- c. Will the henhouse/pen enclosure be securely constructed in a manner that excludes predators and pests, including those that fly, burrow and reach? YES/NO
- d. Will the pen enclosure have a predator and pest proof material across the top? YES/NO
- e. Will the henhouse provide protection from the elements as needed? YES/NO
- f. Will the henhouse be constructed in such a manner and with such materials that allow for effective weekly cleaning? YES/NO
- g. Please provide a separate detailed description of the henhouse/ pen enclosure, including square footages and photographs if possible.

3. Maintenance

a. Will the feed be securely stored in a rodent and pest proof container?

YES/NO

b. Will the feed leftover from feeding remain in an area accessible to rodents and pests past dusk?

YES/NO

c. If weather is too cold, or composting is otherwise not possible, will there be a sealable container for waste to be stored until disposal?

YES/NO

d. If composting is possible, how and where will waste be composted with carbonaceous material such as hay, bedding, or leaves? Please identify composting/ manure storage location on required certified plot plan.

Right corner of property - in compost bin.

e. What measures will be taken to prevent the buildup of pests or rodent populations due to the presence of hens on the property?

I have two dogs and plan to get a pest tight coop. The chicken run will be enclosed in wire, and the wire will go deep in the ground. Hand woven cloth will be used as wire. I will also install a motion detector light.

f. Please provide a separate detailed written maintenance plan describing the following: cleaning practices and schedule for the henhouse/pen enclosure and feed and water containers, which anti-bacterial/viral cleaning solution will be used, which bedding material will be used in the henhouse and at which depth it will be provided, how frequently the bedding material will be composted, and any other appropriate nuisance (odor & noise) prevention measures that will be taken.

II. HENS:

1. Hen keeper

a. Will the hen keeper be taking, or has the hen keeper taken, a class in keeping hens? YES/NO
If yes, please provide a copy of a certificate of completion from a hen-keeping course.

→ I am a biologist, and have researched how to care for chickens.

b. Will there be a knowledgeable person in charge to care for hens during vacations or extended leaves?

YES/NO

2. Source

a. What type of hens and how many hens will you be keeping?

3-6 Cochins

b. Will the hens be acquired from S. pullorum clean sources from National Poultry Improvement Plan (NPIP) participants? YES ☒ NO

c. Where will the hens be acquired from and what documentation will be provided?

A friend and no paperwork.

3. Health & Disease Concerns

a. Will the hens be vaccinated from any communicable diseases?

☒ YES ☐ NO

If yes, from what? Not sure yet - will talk to my vet.

b. Will newly acquired hens be isolated from healthy resident birds?

☒ YES ☐ NO

If yes, where and for how long? 3 weeks

c. Will the hens be separated from wild migratory fowl at all times?


☒ YES ☐ NO

d. What will be done with a hen if it dies? it will be disposed of in a sanitary manner.

To complete this application the following materials must be provided:

- ☐ Copy of list of property abutters obtained from Town of Arlington Assessors Office
- ☒ If applicant is not sole property owner, signed written statements from all property owners granting permission for the keeping of hens
- ☐ Plot plan drawn to scale depicting all of the following: all structures on property, all structures on abutting properties, proposed locations of the henhouse/pen enclosure, composting/manure storage and food storage, and distance of henhouse and pen from property lines and existing adjacent residences. The BOH reserves the right to require the applicant to provide a plot plan certified by a professional engineer or land surveyor to resolve any questions or disputes relating to the conformance of the placement of the henhouse and pen with any and all relevant property setbacks and zoning bylaw requirements.
- Written maintenance plan and description of henhouse/pen enclosure
- Copy of certificate of completion from a hen-keeping course if applicable
- After a BOH hearing date has been set, submit a copy of signed letter or receipt from USPS that a certified letter has been received by each abutter informing them of your application to keep hens and notifying them of the BOH hearing date, time and location. Abutters include both property owners and tenants.

I have read the town bylaws regarding the keeping of hens and understand the requirements as outlined. I understand failure to comply with the requirements of the town bylaws and failure to prevent a public health nuisance may result in revocation of my Permit to Keep Hens.

Signature:  Date: 04-15-2017

-----Office use only-----

Board of Health Meeting Date Assigned: _____

Application Addendum Information

Pen Enclosure Description/Plan:

The pen will be built as the picture below (following the recommendations of the original build (see video). I will be having an enclosed chicken run, and will have the hardware cloth going into the ground to alleviate pest access. The coop will be approximately 4X4 on the inside with a run that extends under the coop for shade with an approximate size of 6x6.



Image 1. See "Most Efficient Chicken Coop Tour Video

<https://www.youtube.com/watch?v=qMsFhV1jhCE>

Pen Location:

The 14 Ryder Street lot is 6339 sq ft, and abuts 18 Ryder, 2 Ryder, 17 Beck, 39-41 Forest, and 38 Forest. The proposed location is in green (see Image 2). Secure food storage will be close to the coop within a smaller shed.

Maintenance Plan

Cleaning Practices will follow the video shown above, using a pine shaving layering method, and will be replaced monthly. The feed and water containers will also follow the videos suggestions, in using PVC pipe to hold the food and water. A bi-yearly cleaning will also be done.

From: Nicole Webber <weberphin@gmail.com>
To: Padraig Martin <PMartin@town.arlington.ma.us>
Date: 06/11/2019 12:02 PM
Subject: FW: Keeping og Hens Application

Pat,
Per our conversation on Monday, I will be shifting the maintenance to removing the soiled bedding once a week. I have also dropped by the Mill Brook Vet Clinic, and they said they could both euthanize and properly dispose the hen if needed.
They do not however vaccinate, so I left a message with the Angel in Boston to see what they recommend.
Thank you, Nicole

From: Nicole Weber <weberphin@gmail.com>
Date: Monday, May 13, 2019 at 8:18 PM
To: Padraig Martin <PMartin@town.arlington.ma.us>
Subject: Re: Keeping og Hens Application

Pat,

Here you go...

1. Where will the hens be acquired? A colleague that I work with. She has raised Bearded Belgium Mille Fleuar D'ucclle and has offered some to me.
2. Where will you isolate newly acquired hens from resident birds? In a smaller cage in a separate room.
3. What manor of disposal will be used if a hen dies? I will bring the hen to my local vet (Mill Brook) to dispose of.
4. Please provide an official list of abutters from the Assessors Office. Attached.
5. Please provide a written maintenance plan and description pf henhouse/pen enclosure.

Hen House:

The coop will be built from existing wood that will be retrofitted (similar to video link) to include the following:

- The coop will be at least 6' from any adjacent property line.
- The coop will sit on top of concrete blocks or wood stilts for stability, and allow the chickens to rest under the coop in the rain.
- The dimensions of coop will be approximately 4X4 on the inside with two roosts to allow for chicken comfort, sleeping etc..
- Openings for ventilation will be fortified with hardware cloth, preventing critters, as well a sloped roof preventing entry of water.
- A polymer linoleum-type material for the floor, facilitating cleaning. This lining will extend up the walls about 12" as well, preventing rotting of the floor and making cleaning easier. Assessable through a large door to access and create a layer of pine shavings with the deep layer method.
- Two nesting boxes will be accessible from the inside the coop.
- A robust metal trashcan filled with feed may be stored inside the coop, closed with a heavy duty bungee chord.
- Effort will be made to prevent the inside of the coop from getting wet or exposed to extreme wind, while also maximizing adequate ventilation.
- Any potential entry, such as the layer boxes or doors, will be lockable, preventing entry via possums. Also wire cloth will be used and buried in the ground to prevent entries from predators.

Maintenance:

A critter proof compost bin will be located next to the chicken coop, outside the

coop. A metal garbage can.

- The entire coop will be cleaned every other week, entailing removing all the soiled bedding and adding to the compost bin, and reapplying new bedding.
- Carbon rich material will be used to balance the nitrogen-rich manure. Sawdust and saved autumn leaves will be used to mix with the manure in the compost bin, and pine chips and/or straw will be used inside the coop as bedding, also helping to minimize odor and keep a proper carbon/nitrogen balance. The depth of bedding will be around 2" year round, slightly higher over winter.
- The interior floor of the chicken coop will be made of linoleum-type material, facilitating cleaning. Each time the coop is cleaned, the coop's base will be cleaned with a diluted vinegar solution, along with all the feeders/waterers.
- The waterer and feeder will be raised coming off the coop so they're slightly over the ground, helping to minimize spilling. Once a week, the feeder and waterer will be cleaned with hot water and a vinegar solution.
- Feeding, watering, and egg collection will occur daily.
- All chickens, up to 6 at one time, will be female, excluding any possibility of roosters.

6. Can you describe your composting plans in greater detail. Specifically what materials do you compost and what type of compost bin do you use. How frequently will you compost bedding from the henhouse?

I will use a three bin system, where the bedding is removed and mixed with carbon rich material (to minimize odor) in one bin and build for a month, then I will move to the second bin and rotate out every 30 days. The heat will kill harmful microbes, and the compost will be use on flower beds.

See you in the morning, Nicole

From: Padraig Martin <PMartin@town.arlington.ma.us>

Date: Friday, May 3, 2019 at 8:55 AM

To: <Weberphin@gmail.com>

Subject: Keeping og Hens Application

Hello Nicole,

Attached please find a recent application with supporting materials that was approved by the Board of Health.

After reviewing your application, I have a few questions.

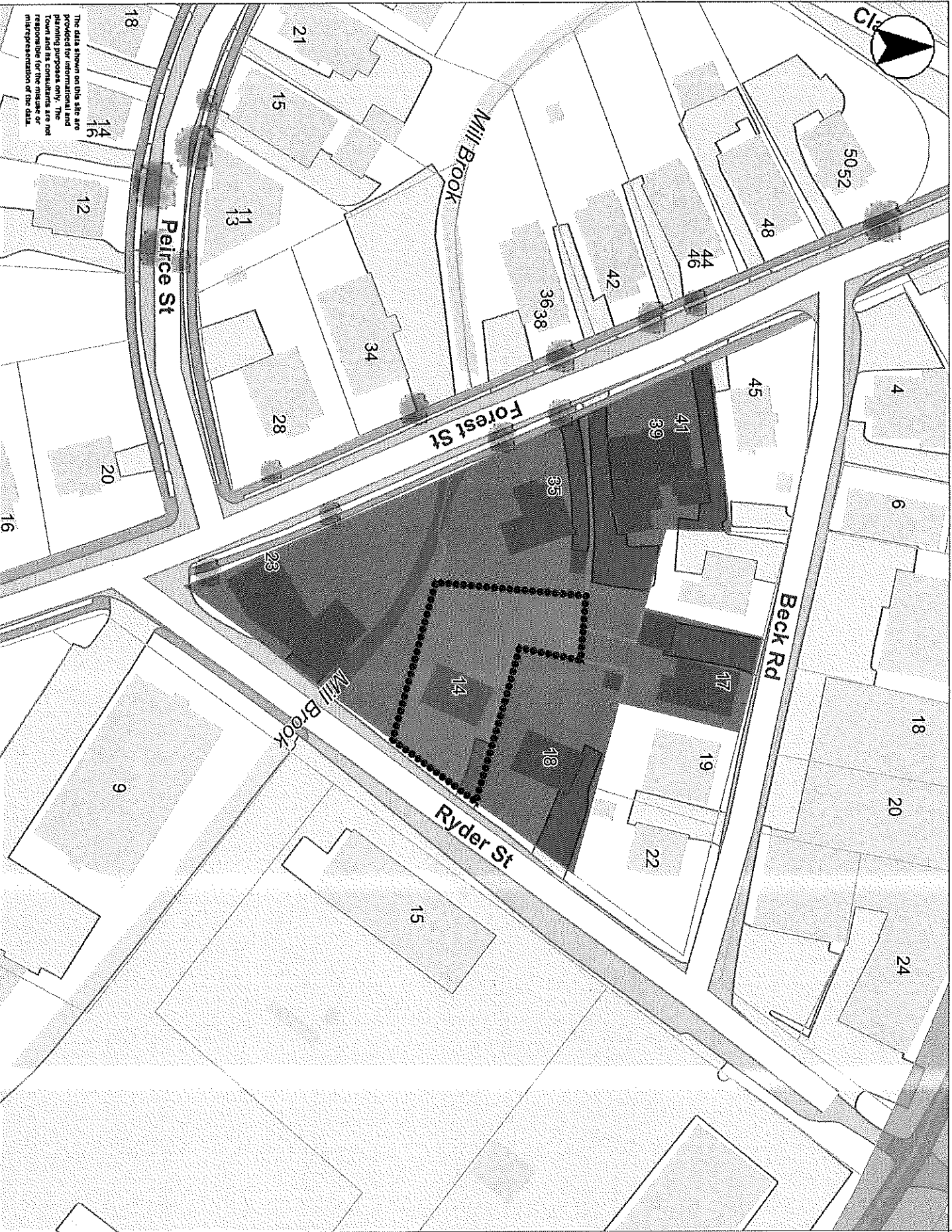
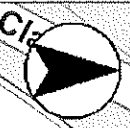
1. Where will the hens be acquired?
2. Where will you isolate newly acquired hens from resident birds?
3. What manor of disposal will be used if a hen dies?
4. Please provide an official list of abutters from the Assessors Office.
5. Please provide a written maintenance plan and description pf henhouse/pen enclosure.
6. Can you describe your composting plans in greater detail. Specifically what materials do you compost and what type of compost bin do you use. How frequently will you compost bedding from the henhouse?

Once I have all of the information requested the next step will be to schedule a site walk of the proposed henhouse/pen location on your property.

Please feel free to reach out with any questions or concerns.

Thank-you,

Pat



The data shown on this site are provided for reference only. The Town and its consultants are not responsible for the misuse or misrepresentation of the data.



Printed on 05/13/2019 at 02:41 PM



- Places by Category**
- Police Station
 - Fire Station
 - School
 - Library
 - Public Works
 - Tree - Inventory (for Base I)
 - Poles - For Base Maps - Hi
 - Poles - Traffic Signal Pole
 - Poles - Pedestrian Signal Po
 - Street Light
 - Recreation - Facilities
 - Recreation - Fields Courts
 - Recreation - Fields Courts
 - Open Space - Conservation
 - Open Space - Minuteman I
 - Open Space - Labels
 - Open Space
 - Open Space - Private
 - Open Space - Town Owned
 - Master Plan Base Map - St
 - Master Plan Base Map - Pr
 - Master Plan Base Map - Bt
 - Roads - OneWay (for Base
 - Roads - For Small Scale (f
 - Roads - Major Road
 - Roads - Local Road
 - Roads - For Large Scale (f
 - Master Plan Base Map - M
 - Highways - Gray
 - Highways - State Highway
 - Pavement Markings
 - Impervious Surface - For B
 - Street
 - Sidewalk
 - Street Island
 - Driveway
 - Driveway Lot
 - Master Plan - Town Bound
 - Master Plan Base Map - W
 - Master Plan Base Map - W
 - Master Plan Base Map - W
 - Master Plan Base Map - T



Office of the
Board of Assessors
Robbins Memorial Town Hall
Arlington, MA 02476
(781) 316-3050
Assessors@town.arlington.ma.us

Abutters List

Date: May 13, 2019

Subject Property Address: 14 RYDER ST Arlington, MA
Subject Property ID: 57-2-7.B

Search Distance: Direct Abutters-Keeping of Hens

The Board of Assessors certifies the names and addresses of requested parties in interest, all abutters to a single parcel who are direct abutters.

Three handwritten signatures in black ink are stacked vertically. The top signature appears to be "Kevin C. Feeley", the middle one "Robert E. Greeley", and the bottom one is a stylized signature, possibly "D. H. [unclear]".

Board of Assessors

Abutters List

Date: May 13, 2019

Subject Property Address: 14 RYDER ST Arlington, MA

Subject Property ID: 57-2-7.B

✓ Prop ID: 57-2-3
Prop Location: 17 BECK RD Arlington, MA
Owner: MARADIANOS PETER
Co-Owner:
Mailing Address:
17 BECK RD
ARLINGTON, MA 02476

Y Prop ID: 57-2-7.A
Prop Location: 35 FOREST ST Arlington, MA
Owner: XUE CHENGHAI
Co-Owner: ZHANG LEI
Mailing Address:
35 FOREST ST
ARLINGTON, MA 02476

Ⓢ Prop ID: 57-2-7.B
Prop Location: 14 RYDER ST Arlington, MA
Owner: WEBER NICOLE R
Co-Owner:
Mailing Address:
14 RYDER ST
ARLINGTON, MA 02476

✓ Prop ID: 57-2-7.C
Prop Location: 18 RYDER ST Arlington, MA
Owner: DESHPANDE NAREN/ANUJA
Co-Owner:
Mailing Address:
18 RYDER STREET
ARLINGTON, MA 02476

✓ Prop ID: 57-2-8.A
Prop Location: 23 FOREST ST UNIT A Arlington, MA
Owner: ERICKSON KAREN
Co-Owner: TAYLOR THOMAS
Mailing Address:
23 FOREST STREET #A
ARLINGTON, MA 02476

✓ Prop ID: 57-2-8.B
Prop Location: 23 FOREST ST UNIT B Arlington, MA * extra
Owner: TEE ALEXANDER K
Co-Owner:
Mailing Address:
2 RYDER STREET UNIT B
ARLINGTON, MA 02476

Prop ID: 57.A-2-39

Prop Location: 39 FOREST ST UNIT 39 Arlington, MA

X Owner: KAMINISHI IKUMI

Co-Owner:

Mailing Address:

39 FOREST ST UNIT 39

ARLINGTON, MA 02476

X Prop ID: 57.A-2-39.A

Prop Location: 39 FOREST ST UNIT 39A Arlington, MA

Owner: SANTIAGO ADALBERTO

Co-Owner: BRIN ERIKA L

Mailing Address:

39 FOREST ST UNIT 39A

ARLINGTON, MA 02476

X Prop Location: 41 FOREST ST UNIT 41 Arlington, MA

Owner: GAIKWAD VIKAS B

Co-Owner:

Mailing Address:

41 FOREST ST UNIT 41

ARLINGTON, MA 02476

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<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

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Postage \$0.55

Total Postage and Fees \$4.05

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<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.55

Total Postage and Fees \$4.05

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<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

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7018 1830 0002 5049 4887

7018 1830 0002 5049 4887

7018 1830 0002 5049 4887

June 1st, 2019

Nicole Weber
14 Ryder Street
Arlington, Ma 02476

Dear Neighbor,

Three is a charm, right? Here is the update.... The Board of Health hearing is scheduled for June 19th at 5:30 PM in the Mural Room of the Arlington Senior Center (27 Maple Street). Thank you and we look forward to sharing eggs soon.

Have a wonderful weekend. Nicole

May 21th, 2019

So, I bet you realized my day count was off... so my hearing will be next month. Sorry for the mix up. I will be sending you another letter in about a week. Oh man... this is fun!

Enjoy the sunny weather.
Thank you, Nicole

May 13th, 2019

Hi, my name is Nicole and we are your new neighbors. ☺ The reason I'm writing you is because we're planning on installing a small henhouse an enclosure area for keeping a handful of hens in the back of our yard. The area will be setback from the property line and away from any structures, the hens will be quiet (no roosters present), and there is a thorough plan of maintenance in play as well. There is currently a Board of Health hearing scheduled for approval of this on May 22 at 5:30 PM in the Mural Room of the Arlington Senior Center (27 Maple Street). Under Arlington regulations I am required to notify all abutters of our property at least 14 days prior to this meeting.

So if you have any questions, feel free to contact me... either by phone or email listed below.

We look forward to getting to know you, and hope to share some fresh eggs with you soon.

Thank you,

Nicole Weber and Family
weberphin@gmail.com
617.407.3137



Town of Arlington, Massachusetts

Fletcher Tilton

ATTACHMENTS:

Type	File Name	Description
Reference Material	Fletcher_Tilton_Correspondence_to_Arlington_Public_Health_dated_053019.pdf	Fletcher Tilton

Fletcher Tilton^{PC}
Attorneys at law

May 30, 2019

VIA FIRST CLASS MAIL
AND E-MAIL (cbongiorno@town.arlington.ma.us)

Christine Bongiorno, Director
Health & Human Services
27 Maple Street
Arlington, MA 02476

Marie Walsh Condon, M.D.
Board of Health
27 Maple Street
Arlington, MA 02476

RE: Public Health Department – Town of Arlington, MA
Proposed/Amended Regulation of Sale of Tobacco and Nicotine Products

Dear Director Bongiorno and Chair Condon:

This firm represents the Coalition for Responsible Retailing (“CRR”). It is our understanding that the Arlington Board of Health (“BOH”) held a public meeting, on or about Wednesday, April 10, 2019, relative to the BOH’s proposed amended regulation concerning the sale of tobacco and nicotine products. Respectfully, I thought it would be appropriate to provide the following information in connection with the meeting.

As you may know, in December of 2018, the City of Somerville Board of Health voted in favor of a city-wide ban on the sale of menthol, mint and wintergreen tobacco products from retail stores. Said ban also includes a prohibition on the sale of certain non-combustible electronic products from retailers.

I am writing to provide formal notice to the Arlington BOH that certain retail storeowners and clients of Fletcher Tilton PC have filed a civil lawsuit against the Somerville BOH relative to the foregoing ban. The lawsuit alleges, among other things, that the menthol, mint and wintergreen ban does not constitute a public health decision, is arbitrary and capricious, and exceeds the Somerville BOH’s authority. In other words, the ban constituted an abuse of discretion and must be stricken. Indeed, the ban simply stands to keep on retailers’ shelves the more dangerous combustible tobacco products, while removing e-cigarettes, which have been recognized as less harmful than, and an important tool in reducing the use of, combustible cigarettes by health experts at the New England Journal of Medicine, among many others. Importantly, the Middlesex Superior Court presently is considering a motion for preliminary injunction, which the Somerville plaintiffs filed in April of 2019.

In the event that the Arlington BOH affirmatively votes to effectuate any restriction on the sale of menthol, mint or wintergreen tobacco products and/or electronic cigarettes, we expect that other retail owners and clients of Fletcher Tilton PC, like those in Somerville, will seek to prosecute similar litigation against this BOH.

Client Files/47700/0001/03150761.DOCX

Please direct all correspondence to our Boston office.

Health & Human Services

FletcherTilton.com

JUN 03 2019

Arlington, MA

WORCESTER | FRAMINGHAM | BOSTON | PROVIDENCE | CAPE COD

It is our understanding that many prudent cities and towns are now waiting to confirm the outcome of the litigation involving the Somerville BOH before promulgating any further restrictions relative to the sale of tobacco products and/or electronic cigarette products. We respectfully suggest that the Arlington BOH do the same.

It is important to note that convenience stores within the Town of Arlington have a FDA compliance rate of 100% (see statistical analysis attached) between 2016 and 2019, which indicates that underage use and access of these products is not a result of convenient store sales. Rather, underage use of these products is stemming from other accessible sources, such as the internet. This is further evidenced by the Massachusetts Attorney General's recent lawsuit brought against e-cigarette company, Eonsmoke, alleging that it targets teenagers.

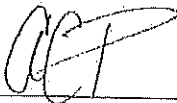
Last, I do hope the Arlington BOH recognizes that its contemplated restrictions will unquestionably compel tobacco and nicotine consumers to purchase combustible products.

There is ample, valid evidence that combustible products, e.g. certain Marlboro or Camel products, are far more dangerous than the non-combustible e-cigarettes. The BOH's proposed ban simply communicates to your adult tobacco and nicotine consumers that the more dangerous combustible products somehow warrant greater accessibility in the Town of Arlington. How is that a public health decision? On this point, I also enclose a signed affidavit from Dr. Michael Siegel who serves as our expert in the Somerville litigation. I ask that you carefully read his testimony before you decide to move forward with respect to any further modification to Arlington's tobacco control regulation.

Please do not hesitate to contact me directly with any questions or concerns.

Thank you for your professional courtesies.

Very truly yours,



Adam C. Ponte, Esq.
FLETCHERTILTON PC
12 Post Office Square, 6th Floor
Boston, MA 02109
P: 617-336-2280 | F: 617-336-4480
E: aponte@fletchertilton.com

cc: Jess D. Oyer, Esq.
Patrick C. Tinsley, Esq.

Compliance Check Inspections of Tobacco Product Retailers Through 4/30/19 - Search Results

You searched for:
 City contains: Arlington
 State is MA
 Decision Date: 01/01/2016 through 05/30/2019

Retailer Name	Street Address	City	State	Minor Involved	Sale to Minor	Decision Date	Inspect
ARLINGTON CONVENIENCE	245 MASSACHUSETTS AV	ARLINGTON	MA	Yes	No	3/29/2019	No Viol
ARLINGTON GULF	85 RIVER ST	ARLINGTON	MA	Yes	No	3/28/2019	No Viol
SYMME'S MINI MART	681 MASSACHUSETTS AV	ARLINGTON	MA	Yes	No	3/28/2019	No Viol
BROADWAY MARKET	94 BROADWAY	ARLINGTON	MA	Yes	No	3/28/2019	No Viol
7 STAR GROCERY	6 MEDFORD ST	ARLINGTON	MA	Yes	No	3/28/2019	No Viol
BOYLES FAMILY MARKET	64 BROADWAY	ARLINGTON	MA	Yes	No	3/28/2019	No Viol
LITTLE JOES CONVENIENCE	206 SUMMER ST	ARLINGTON	MA	Yes	No	3/28/2019	No Viol
EASY CONVENIENCE STORE	935 MASSACHUSETTS AV	ARLINGTON	MA	Yes	No	3/28/2019	No Viol
GULF	140 MYSTIC ST	ARLINGTON	MA	Yes	No	3/28/2019	No Viol
DAGG'S CONVENIENCE STORE	148 MASSACHUSETTS AV	ARLINGTON	MA	Yes	No	3/28/2019	No Viol
ARLINGTON LIQUORS BEER AND WINE	94 SUMMER ST	ARLINGTON	MA	Yes	No	3/28/2019	No Viol
GALAXY MARKET	1348 MASSACHUSETTS AV	ARLINGTON	MA	Yes	No	12/27/2018	No Viol
FENWAY MARKET	203 BROADWAY	ARLINGTON	MA	Yes	No	7/17/2018	No Viol
7 STAR GROCERY	6 MEDFORD ST	ARLINGTON	MA	Yes	No	3/15/2018	No Viol
A AND A MARKET	1042 MASSACHUSETTS AV	ARLINGTON	MA	Yes	No	3/15/2018	No Viol
ARLINGTON GULF	85 RIVER ST	ARLINGTON	MA	Yes	No	3/15/2018	No Viol
ARLINGTON LIQUORS BEER AND WINE	94 SUMMER ST	ARLINGTON	MA	Yes	No	3/15/2018	No Viol
ARLINGTON SHELL	934 MASSACHUSETTS AV	ARLINGTON	MA	Yes	No	3/15/2018	No Viol
BOYLES FAMILY MARKET	64 BROADWAY	ARLINGTON	MA	Yes	No	3/15/2018	No Viol
BROADWAY MARKET	94 BROADWAY	ARLINGTON	MA	Yes	No	3/15/2018	No Viol
CHRISTOS FRUIT AND DELI	200 MASSACHUSETTS AV	ARLINGTON	MA	Yes	No	3/15/2018	No Viol
MAGGIE'S CONVENIENCE STORE	148 MASSACHUSETTS AV	ARLINGTON	MA	Yes	No	3/15/2018	No Viol

7 STAR GROCERY	6 MEDFORD ST	ARLINGTON	MA	No	No	2/2/2017	No Violat
BOYLES FAMILY MARKET	64 BROADWAY	ARLINGTON	MA	No	No	2/2/2017	No Violat
BROADWAY MARKET	94 BROADWAY	ARLINGTON	MA	No	No	2/2/2017	No Violat
GULF	140 MYSTIC ST	ARLINGTON	MA	No	No	2/2/2017	No Violat
GALAXY MARKET	1348 MASSACHUSETTS AV	ARLINGTON	MA	No	No	2/2/2017	No Violat
SYMMES MINI MART	681 MASSACHUSETTS AV	ARLINGTON	MA	No	No	2/2/2017	No Violat
A AND A MARKET	1042 MASSACHUSETTS AV	ARLINGTON	MA	No	No	2/1/2017	No Violat
EASY CONVENIENCE STORE	935 MASSACHUSETTS AV	ARLINGTON	MA	No	No	2/1/2017	No Violat
ARLINGTON SHELL	934 MASSACHUSETTS AV	ARLINGTON	MA	No	No	2/1/2017	No Violat
DAGG'S CONVENIENCE STORE	148 MASSACHUSETTS AV	ARLINGTON	MA	No	No	2/1/2017	No Violat
CHRISTOS FRUIT AND DELI	200 MASSACHUSETTS AV	ARLINGTON	MA	No	No	2/1/2017	No Violat
MASS CONVENIENCE	245 MASSACHUSETTS AV	ARLINGTON	MA	No	No	2/1/2017	No Violat
SYMMES MINI MART	681 MASSACHUSETTS AV	ARLINGTON	MA	No	No	5/11/2016	No Violat
GALAXY MARKET	1348 MASSACHUSETTS AV	ARLINGTON	MA	No	No	5/11/2016	No Violat
EASY CONVENIENCE STORE	935 MASSACHUSETTS AV	ARLINGTON	MA	No	No	5/11/2016	No Violat
ARLINGTON SHELL	934 MASSACHUSETTS AV	ARLINGTON	MA	No	No	5/11/2016	No Violat
FENWAY MARKET JR'S	203 BROADWAY	ARLINGTON	MA	Yes	No	3/4/2016	No Violat
DAGG'S CONVENIENCE STORE	148 MASSACHUSETTS AV	ARLINGTON	MA	Yes	No	3/3/2016	No Violat
PETER PAN SUPERETTE	2 PARK AV	ARLINGTON	MA	Yes	No	3/3/2016	No Violat
ARLINGTON LIQUORS BEER AND WINE	94 SUMMER ST	ARLINGTON	MA	Yes	No	3/3/2016	No Violat
ARLINGTON GULF	85 RIVER ST	ARLINGTON	MA	Yes	No	3/3/2016	No Violat
CHRISTOS FRUIT AND DELI	200 MASSACHUSETTS AV	ARLINGTON	MA	Yes	No	3/3/2016	No Violat
LITTLE JOES CONVENIENCE	206 SUMMER ST	ARLINGTON	MA	Yes	No	3/3/2016	No Violat
7 STAR GROCERY	6 MEDFORD ST	ARLINGTON	MA	Yes	No	3/3/2016	No Violat
BOYLES FAMILY MARKET	64 BROADWAY	ARLINGTON	MA	Yes	No	3/3/2016	No Violat
MASS CONVENIENCE	245 MASSACHUSETTS AV	ARLINGTON	MA	Yes	No	3/3/2016	No Violat
BROADWAY MARKET	94 BROADWAY	ARLINGTON	MA	Yes	No	3/3/2016	No Violat
GULF	140 MYSTIC ST	ARLINGTON	MA	Yes	No	3/3/2016	No Violat

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
DOCKET NO.: 1981CV366

HIMGIRI ENTERPRISES, INC., d/b/a)
K2 BEER AND WINE, BIKAS PRADHAN,)
GHULAM ABBAS, FAISAL ABBAS,)
GOHA LLC d/b/a STOP AND SAVE,)
and HAJURI SINGH,)
)
Plaintiffs,)
)
v.)
)
BRIAN GREEN, PAULA MACHADO, and)
ROBERT CICCIA, as they are Members of the)
City of Somerville Board of Health,)
)
Defendants.)
)

AFFIDAVIT OF MICHAEL SIEGEL

I, Michael Siegel, hereby depose as follows:

1. I make this Affidavit based on my personal knowledge of the factual statements contained herein, and my stated opinions are based upon the sum of my education, training, reading and extensive professional experience. The cited reference material, scientific or medical literature upon which I rely for certain factual information, research data, and in supporting my expert opinions, is typical of the types of reference material, scientific or medical literature upon which I and other medical experts in my field regularly rely upon in our professional work.
2. I am a physician and a professor in the Department of Community Health Sciences at the Boston University School of Public Health. For the past 32 years, I have been a tobacco control researcher and anti-tobacco advocate.

3. I have testified in eight (8) different lawsuits against the tobacco industry. I consider myself to be a long-time, committed anti-tobacco researcher and advocate.
4. I summarize my educational background as follows:
 - a. University of California at Berkeley/UCSF
General Preventive Medicine Residency Program
August, 1991 to June, 1993
M.P.H. completed: May, 1992 (Epidemiology)
 - b. Berkshire Medical Center, Pittsfield, MA
PGY-1 Year in Internal Medicine
July, 1990 to June, 1991
 - c. Yale University School of Medicine
M.D. completed: May, 1990
 - d. Brown University
B.A., Environmental Studies: May, 1986
5. Affixed hereto as Tab 1 is a true and accurate copy of my current curriculum vitae.
6. I am intimately familiar with the Somerville Board of Health's (the "Board") recent December 13, 2018 decision whereby the Board enacted a modification to its tobacco control regulation. In pertinent part, the Board decided, effective April 1, 2019, that Somerville convenience stores and retailers shall be prohibited from selling: (i) tobacco products of the mint, menthol and wintergreen variety; and/or (ii) e-cigarettes of any flavor, including tobacco flavor (the "Regulation").
7. The Regulation will allow Somerville convenience stores to only sell non-menthol combustible cigarettes, e.g., most Marlboro and Camel brand cigarettes, while excluding menthol cigarettes, e.g., most Newport cigarette brands, since the vast majority of Marlboro and Camel brands are non-mentholated and the vast majority of Newport brands are mentholated. Adult only stores, also known as 21-and-up stores, will be permitted to sell e-cigarettes and tobacco products of all

flavors and varieties. I do not know how many such adult only stores, if any, exist in Somerville.

The Regulation Only Serves To Harm Public Health In Somerville.

8. Based upon my approximate 32 years of experience and knowledge of the subject matter relative to underage and adult use of tobacco and nicotine products, it is my expert opinion to a reasonable degree of medical probability and certainty, that the Board's enactment of the Regulation does not constitute a decision in the interest of public health. Stated differently, in my expert opinion, the net result of the Regulation will be to harm the public health and the citizens of Somerville. I will set out the basis and rationale for my expert opinions below.
9. It is my understanding that the Board enacted the Regulation as a purported method to reduce the number of Somerville youth who use tobacco and/or e-cigarette products. The Board seemingly ignored the fact that adults, not teenagers, are far more inclined to use e-cigarette products. Indeed, millions of former adult smokers rely upon non-combustible tobacco products, like flavored e-cigarettes, to help themselves abstain from the highly addictive and deadly tobacco burning cigarettes. Unlike combustible tobacco products, non-combustible tobacco products do not contain tobacco or as many of the other toxins and carcinogens that are the leading causes of lung disease and cancer in users of combustible tobacco products.
10. Notably, the current commissioner of the Food and Drug Administration ("FDA"), Scott Gottlieb, M.D., issued a press release in November of 2018, stating that we "must acknowledge the possibility that the availability of ... flavors in [e-cigarettes] may be important to adult smokers seeking to transition away from cigarettes."¹ Commissioner Gottlieb went further by stating that we must avoid creating "a situation where the combustible products have features

¹ Statement from FDA Commissioner Scott Gottlieb, M.D., *FDA Statement*, November 15, 2018, <https://www.fda.gov/News/Events/Newsroom/PressAnnouncements/ucm625884.htm>

that make them more attractive than the non-combustible products” or “a situation where those who currently use menthol-flavored cigarettes might find it less attractive to switch completely to an e-cigarette.”

11. Moreover, a recent peer-reviewed study provides that 85% of adults using non-combustible tobacco products prefer flavored e-cigarettes.² This study from the Harm Reduction Journal, surveyed approximately 16,000 adult former smokers who had quit smoking combustible cigarettes by using e-cigarette products.
12. The Board simply cannot ignore the fact that there are at least 2.5 million adults in the United States who rely upon e-cigarettes as a method for quitting the use of combustible cigarettes.³
13. Furthermore, the New England Journal of Medicine recently published a study finding that e-cigarettes are twice as effective as nicotine patches in helping smokers quit completely.⁴ It cannot be overstated that these non-combustible e-cigarette products are literal life-savers for millions of former smokers.
14. Accordingly, the truth of the matter is that this Regulation will simply eliminate the sale of all e-cigarettes at Somerville convenience stores and allow for the sale of the majority of combustible cigarettes to continue unabated. In my expert opinion to a reasonable degree of medical probability and certainty, this will result in many former smokers going back to smoking combustible cigarettes – which are undoubtedly far more dangerous than e-cigarettes. Indeed, a 2017 Working Paper from The National Bureau of Economic Research, a private, non-profit,

² Russell C, McKeganey N, Dickson T, Nides M. Changing patterns of first e-cigarette flavor used and current flavors used by 20,836 adult frequent e-cigarette users in the USA. *Harm Reduction Journal* 2018; 15:33. <https://harmreductionjournal.biomedcentral.com/track/pdf/10.1186/s12954-018-0238-6>

³ Rodu B. FDA Tobacco Director Ignores 2.5 Million “Anecdotal Reports” About E-Cigarettes. *Tobacco Truth*. October 28, 2016. <https://tobaccotruth.blogspot.com/2016/10/fda-tobacco-director-ignores-2-5-million.html>

⁴ Hajek P, et al. A randomized trial of e-cigarettes versus nicotine-replacement therapy. *New England Journal of Medicine* 2019; 380:629-637. <https://www.nejm.org/doi/full/10.1056/NEJMOA1808779>

and non-partisan organization, found that a ban on all e-cigarettes flavors would increase the number of combustible smokers.⁵

15. According to the American Cancer Society's February 2018 position statement, "Combustible tobacco products, primarily cigarettes, are the single greatest cause of cancer and kill about 7 million people worldwide each year. In the United States, 98% of all tobacco-related deaths are caused by cigarette smoking." The statement goes on to observe that, "[b]ased on currently available evidence, using current generation e-cigarettes is less harmful than smoking cigarettes...." Accordingly, the American Cancer Society concludes that, although it is preferable for smokers to quit "cold turkey," those who will not stop smoking cigarettes "should be encouraged to switch to the least harmful form of tobacco product possible," i.e., e-cigarettes or other non-combustible products, because "switching to the exclusive use of e-cigarettes is preferable to continuing to smoke combustible products."⁶

16. Respectfully, it is my expert opinion to a reasonable degree of medical probability and certainty, that there is simply no public health justification for banning e-cigarettes while allowing combustible tobacco cigarettes to remain on convenience store shelves. Assuming there is a government interest in protecting youth from access to electronic cigarettes, then there is a much stronger government interest in protecting youth from access to real, combustible tobacco cigarettes. I do not believe there is any public health justification for banning the sale of a less dangerous product while allowing the sale of a much more dangerous product in the same product category to continue unfettered.

⁵ Bucknell J, Marti J, Sindelar JL, Should Flavors be Banned in Cigarettes and E-cigarettes? Evidence on Adult Smokers and Recent Quitters from a Discrete Choice Experiment, *Tobacco Control* 2019; 28:168-175. <https://tobaccocontrol.bmj.com/content/tobaccocontrol/28/2/168.full.pdf>.

⁶ American Cancer Society Position Statement on Electronic Cigarettes, February, 2018. <https://www.cancer.org/healthy/stay-away-from-tobacco/e-cigarettes-position-statement.html>

17. The Regulation will have the net effect of harming the public health in Somerville because it serves to remove the safer non-combustible products from convenience store shelves, leaving behind the more dangerous, traditional combustible cigarettes. Such a scenario will make it far easier for Somerville residents to purchase tobacco products which are far more harmful than the non-combustible flavored products. In my opinion to a reasonable degree of medical probability and certainty, this will result in many former smokers returning to cigarette smoking, as the electronic cigarettes they are currently relying upon to keep from smoking, or could transition to in the future, are taken off the shelves of the stores where they typically purchase these products.

A Decision To Ban Certain Cigarette Brands Over Others Is Arbitrary.

18. In addition to actually harming the health of Somerville's citizens, the Regulation also will give a competitive advantage to the manufacturers of the Marlboro and Camel cigarette varieties, which are traditional combustible cigarettes, and most of which shall remain on convenience store shelves if the Regulation proceeds, because most Marlboro and Camel varieties are non-mentholated while nearly all Newport varieties are mentholated.
19. In my opinion to a reasonable degree of medical probability and certainty, by choosing to ban menthol cigarettes, but leaving all other cigarettes untouched, the Board would be making a decision that is arbitrary and capricious. Practically speaking, the Regulation essentially bans the Newport, Kool and Salem brands, but allows the continued unfettered sale of Marlboro and Camel brands. There is no public health rationale for singling out certain cigarette brands because all such brands have proven to be equally deadly. Treating Newport, Kool, and Salem brands differently from the similarly situated Marlboro and Camel brands is dangerous because there is no difference in public health risk associated with these cigarette brands. Scientific

evidence shows that menthol cigarettes are no more dangerous than non-menthol cigarettes.⁷

Further, the FDA has made it clear that there is no cigarette brand that is any safer than another cigarette brand. In fact, it is unlawful for any cigarette brand to claim that its product is any safer than another cigarette brand.⁸

20. What the Board also has ignored is that the majority of youth smokers prefer non-menthol cigarettes. The overwhelmingly most popular brand among youth smokers is Marlboro, with Newport being a distant second.⁹ It thus defies logic that the Board has decided to ban Newport sales, but not Marlboro sales, even though we know that youth smokers undoubtedly prefer the Marlboro brand.
21. Public health laws, by definition, must have the effect of protecting the public's health and saving lives — and they must not be arbitrary. For all of the reasons I have stated in support of my opinions, the Regulation at issue will actually harm the public's health in Somerville by making it more difficult for ex-smokers to choose a less harmful option. Moreover, the Regulation is irresponsible and unreasonable because, among other things, it seeks to regulate cigarette brands differently with no valid health justification.

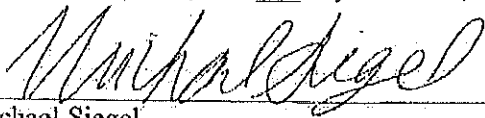
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⁷ Lung Cancer Study Finds Mentholated Cigarettes No More Harmful Than Regular Cigarettes, Journal of the National Cancer Institute (May 18, 2011) <https://academic.oup.com/jnci/article/103/10/810/2516529>

⁸ See Family Smoking Prevention and Tobacco Control Act (Public Law 111-31), section 911 (21 U.S.C. § 387k).

⁹ Perks SN, Armour B, Agaku IT. Cigarette brand preference and pro-tobacco advertising among middle and high school students — United States, 2012–2016. *Morbidity and Mortality Weekly Report (MMWR)* 2018; 67(4):119–124. <https://www.cdc.gov/mmwr/ohimes/67/wr/mm6704a3.htm>

Signed under the pains and penalties of perjury this 13th day of March, 2019



Michael Siegel



Town of Arlington, Massachusetts

Environmental



Town of Arlington, Massachusetts

Restaurant



Town of Arlington, Massachusetts

Public Health Nurse